IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL ACTION NO. 1:12-CV-00375-GCM

ALBERT C. BURGESS,)
Plaintiffs,)
v.	ORDER
USA,)
Defendants.)))

THIS MATTER is before the Court on Petitioner's *pro se* Motion to Certify the Notice of Appeal Timely Filed in 1:12-cv-375 (Doc. No. 115). In his Motion, Petitioner asks the Court to certify that his Notice of Appeal as to Order on Motion for Extension of Time (Doc. No. 100) was timely filed.

Petitioner has confused two separate appeals that he filed and different opinions from the Fourth Circuit. On April 17, 2015, Petitioner appealed this Court's order denying his Motion for Extension of Time. (Doc. No. 100) The Clerk of Court docketed the Notice on that same day. On July 28, 2015, the Fourth Circuit denied that appeal for the following reason: "Because Burgess'[s] informal briefs do not challenge the basis for the district court's disposition, Burgess has forfeited appellate review of the court's order." (Doc. No. 106) In other words, Petitioner filed a Notice of Appeal on April 17, 2015, that Notice was properly docketed, and the Fourth Circuit's rejection of that appeal was not based on any issues of timeliness.

On August 5, 2015, Petitioner filed a *different* Notice of Appeal (Doc. No. 108), asking the Fourth Circuit to review this Court's order denying his Motion to Vacate/Set Aside/Correct Sentence. (Doc. No. 87) Because this Court denied his Motion to Vacate/Set Aside/Correct

sentence on February 26, 2015, the Fourth Circuit concluded that his Notice of Appeal was filed well outside the relevant 60-day limitations period and accordingly dismissed it. (*See* Doc. No. 112)

IT IS THEREFORE ORDERED that Petitioner's Motion to Certify the Notice of Appeal Timely Filed in 1:12-cv-375 is **DENIED**.

Signed: April 4, 2016

Graham C. Mullen

United States District Judge